

Exhibit 2

Exhibit 2

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
C.A. No. 1:20-cv-10002

Emily Forsythe,
Plaintiff

vs.

Wayfair, LLC,
Defendant

Videotaped Deposition of Michael McDole
Wednesday, July 22, 2020
Via Videoconference

-----Kristen C. Krakofsky-----

Court Reporter

VERITEXT

(800) 227-8440

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<p>1 A. Yes.</p> <p>2 Q. And with Amazon?</p> <p>3 A. Yes.</p> <p>4 Q. Are you currently single?</p> <p>5 A. Yes, I am.</p> <p>6 Q. What was the nature of the training at --</p> <p>7 sexual harassment training at 7-Eleven, Ashford, and</p> <p>8 Amazon?</p> <p>9 MS. KAPPELMAN: Object to the form of</p> <p>10 the question, aside from the fact that it's multiple</p> <p>11 questions.</p> <p>12 But go ahead and answer to the extent</p> <p>13 you understand what he's looking for.</p> <p>14 A. I'm sorry. The extent of the training? Is</p> <p>15 that what you asked me?</p> <p>16 Q. The nature and extent of the training --</p> <p>17 MS. KAPPELMAN: Same objection.</p> <p>18 You can answer.</p> <p>19 A. I assume it's, you know, comprehensive</p> <p>20 sexual harassment training, just that it's not</p> <p>21 tolerated in the workplace.</p> <p>22 Q. Was it in person or online? And you can</p> <p>23 answer employer by employer.</p> <p>24 A. It's usually online by virtual training</p> <p>25 sessions for companies, and then -- and then by the</p> <p style="text-align: right;">Page 10</p>	<p>1 A. I do not. I would say it's similar to</p> <p>2 other sexual harassment trainings. Its -- and</p> <p>3 bottom line being that it's not tolerated.</p> <p>4 Q. Purely online at Wayfair?</p> <p>5 A. Correct.</p> <p>6 Q. So when you say it's not tolerated, does</p> <p>7 that mean that -- does it tolerate unconsented</p> <p>8 touching of a female employee by a male employee?</p> <p>9 MS. KAPPELMAN: Object to the form of</p> <p>10 the question. Did you mean to say a female employee</p> <p>11 by a male employee?</p> <p>12 MR. GOODMAN: I not only meant to say</p> <p>13 that, that's what I said.</p> <p>14 MS. KAPPELMAN: Okay. Object to the</p> <p>15 form.</p> <p>16 You can answer, Mike.</p> <p>17 A. Yes. Unwelcome touching, whether it's male</p> <p>18 to female or female to male, is covered as part of</p> <p>19 the training.</p> <p>20 Q. And do you equate unwelcome with</p> <p>21 unconsented?</p> <p>22 A. I'm sorry. Do I equate unwelcome --</p> <p>23 Q. Are they the same thing? Is unwelcome the</p> <p>24 same as unconsented?</p> <p>25 A. I would say, yes, absolutely.</p> <p style="text-align: right;">Page 12</p>
<p>1 employer.</p> <p>2 Q. So you don't remember any in-person</p> <p>3 training at Ashford, 7-Eleven, or Amazon?</p> <p>4 MS. KAPPELMAN: Object to the form;</p> <p>5 mischaracterizes his testimony.</p> <p>6 You can answer.</p> <p>7 A. I'm sorry. Ask that again?</p> <p>8 Q. Do you remember any in-person sexual</p> <p>9 harassment training at Amazon, 7-Eleven, or Ashford?</p> <p>10 A. No, I don't.</p> <p>11 Q. Have you had sexual harassment training at</p> <p>12 Wayfair?</p> <p>13 A. Yes.</p> <p>14 Q. What is your current position at Wayfair?</p> <p>15 A. I'm a site director at one of the</p> <p>16 fulfillment centers.</p> <p>17 Q. Which fulfillment center?</p> <p>18 A. In Perris, California.</p> <p>19 Q. I gather that's near Temecula?</p> <p>20 A. Correct.</p> <p>21 Q. What was the nature and scope of the sexual</p> <p>22 harassment training at Wayfair?</p> <p>23 MS. KAPPELMAN: Object to the form.</p> <p>24 You can answer if you know what he's</p> <p>25 looking for.</p> <p style="text-align: right;">Page 11</p>	<p>1 Q. Have you had any violence in the workplace</p> <p>2 training at any of your employers since the Marine</p> <p>3 Corps?</p> <p>4 A. Yes.</p> <p>5 Q. Has it also been online?</p> <p>6 A. Yes.</p> <p>7 Q. What have those trainings addressed in</p> <p>8 terms of either verbal or physical bullying?</p> <p>9 MS. KAPPELMAN: Object to the form.</p> <p>10 You can answer, Mike.</p> <p>11 A. I would say it's obviously a covered topic.</p> <p>12 But as far as the specific curriculum, I could not</p> <p>13 give you any more detail on that.</p> <p>14 Q. So you don't know what Wayfair's -- just to</p> <p>15 focus on Wayfair, you don't what Wayfair's policy is</p> <p>16 about verbal or physical bullying?</p> <p>17 A. No.</p> <p>18 MS. KAPPELMAN: Object to the form.</p> <p>19 You can answer, Mike. Go ahead.</p> <p>20 A. No, I am aware of their policy. It's also</p> <p>21 not tolerated.</p> <p>22 Q. Is there an overlap between unconsented or</p> <p>23 unwelcome touching between sexes and physical</p> <p>24 bullying --</p> <p>25 MS. KAPPELMAN: I'm going to object.</p> <p style="text-align: right;">Page 13</p>

<p>1 It calls --</p> <p>2 MR. GOODMAN: Let me finish the</p> <p>3 question, please.</p> <p>4 MS. KAPPELMAN: Well, you're asking --</p> <p>5 MR. GOODMAN: I want to finish the</p> <p>6 question.</p> <p>7 MS. KAPPELMAN: You can do whatever</p> <p>8 you want, but --</p> <p>9 (Multiple parties speaking.</p> <p>10 Interruption by the court reporter.)</p> <p>11 BY MR. GOODMAN:</p> <p>12 Q. In terms of whether the company tolerates</p> <p>13 it or not, do you understand that Wayfair not only</p> <p>14 doesn't tolerate unwelcome or unconsented touching,</p> <p>15 it does not tolerate physical bullying by a male of</p> <p>16 a female or by a female of a male?</p> <p>17 A. I mean -- sorry. You're asking if it's --</p> <p>18 if both are untolerated?</p> <p>19 Q. Yes.</p> <p>20 A. Yes, they are.</p> <p>21 Q. And expression of dominance of a male over</p> <p>22 a female by unconsented touching is a form of</p> <p>23 bullying that is not tolerated by Wayfair; is that</p> <p>24 correct?</p> <p>25 MS. KAPPELMAN: Object to the form of</p> <p style="text-align: right;">Page 14</p>	<p>1 touching constitutes physical bullying?</p> <p>2 Q. Whether it can, under certain</p> <p>3 circumstances, constitute -- unconsented touching,</p> <p>4 which is sexual harassment, can also involve</p> <p>5 physical bullying.</p> <p>6 MS. KAPPELMAN: Same objection.</p> <p>7 A. Certainly. It certainly can. And that</p> <p>8 can -- that can be man/woman or man/man.</p> <p>9 Q. There were several instances in early 2019</p> <p>10 in which you sat next to Emily Forsythe with her</p> <p>11 being closest to a wall; correct?</p> <p>12 MS. KAPPELMAN: Object to the form.</p> <p>13 What was that question? Can you read</p> <p>14 that back, Kristen?</p> <p>15 (Last question read.)</p> <p>16 MS. KAPPELMAN: Object to the form.</p> <p>17 Go ahead and answer, Mike, if you</p> <p>18 understand it.</p> <p>19 A. I would say, no, that's not correct.</p> <p>20 That's her account of events, not mine.</p> <p>21 Q. So you recognize that as being -- as being</p> <p>22 in her complaint in this case; correct?</p> <p>23 A. Correct.</p> <p>24 Q. Was there ever a time in January 2019 when</p> <p>25 you were alone with Emily Forsythe in a meeting room</p> <p style="text-align: right;">Page 16</p>
<p>1 the question.</p> <p>2 You can answer, Mike.</p> <p>3 A. I'd say in both cases. Not simply just</p> <p>4 male to female.</p> <p>5 Q. In other words, bullying can extend to</p> <p>6 people of the same sex, but sexual harassment</p> <p>7 involves people of different sex; correct?</p> <p>8 MS. KAPPELMAN: Object to the form.</p> <p>9 It calls for a legal conclusion which is actually</p> <p>10 not correct.</p> <p>11 BY MR. GOODMAN:</p> <p>12 Q. You can answer.</p> <p>13 A. No, it's not correct. I think sexual</p> <p>14 harassment doesn't necessarily have to be just</p> <p>15 opposite genders.</p> <p>16 Q. So what are you trying to say? Let me</p> <p>17 reask the question.</p> <p>18 Under certain circumstances, can</p> <p>19 unconsented touching also be -- involve bullying,</p> <p>20 physical bullying?</p> <p>21 MS. KAPPELMAN: Object to the form of</p> <p>22 the question; calls for legal conclusion.</p> <p>23 Testify about what you know, Mike.</p> <p>24 A. I'm trying to understand your question.</p> <p>25 You're asking if -- you're asking if unconsented</p> <p style="text-align: right;">Page 15</p>	<p>1 in a facility of Wayfair in Perris, California?</p> <p>2 A. Yes, there was. And if -- allow me to</p> <p>3 elaborate that --</p> <p>4 Q. No. That's my question. Wayfair's counsel</p> <p>5 is going to have a chance to ask you questions.</p> <p>6 Were you having a conversation about your</p> <p>7 performance?</p> <p>8 A. Yes.</p> <p>9 Q. Did you move from an end of the table or</p> <p>10 the opposite side of the table to Emily's side of</p> <p>11 the table?</p> <p>12 A. No.</p> <p>13 Q. So in any conversation you had in January</p> <p>14 2019 with Emily in Perris in a meeting room, you</p> <p>15 were not sitting on the same side of the table as</p> <p>16 her?</p> <p>17 A. No.</p> <p>18 Q. Did you -- do you remember distinctively</p> <p>19 the meeting that I'm referring to?</p> <p>20 A. I do, yes.</p> <p>21 Q. Did you touch her left side with your right</p> <p>22 hand?</p> <p>23 A. No.</p> <p>24 Q. Did you touch it with your left hand?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 17</p>

<p>1 Q. Did she move away from you when you were 2 sitting in this meeting room after you moved closer 3 to her than you had been at some point earlier in 4 the meeting? 5 MS. KAPPELMAN: Object to the form of 6 the question; mischaracterizes his testimony. He 7 said he didn't do that. 8 You can answer. 9 A. I'd say no. We were on opposite sides of 10 the table. 11 Q. So this is one of multiple instances I 12 expect to have occur during this deposition where 13 you say Emily Forsythe is a liar. Correct? 14 MS. KAPPELMAN: Object to the form of 15 the question. Are you referring to this specific 16 instance? Because you haven't asked him about any 17 other instances, so I'm not sure what you're even 18 saying. 19 MR. GOODMAN: I'll ask the question 20 less rhetorically. 21 MS. KAPPELMAN: Yeah. And I'm going 22 to tell you not to answer because it's a 23 hypothetical -- 24 (Multiple parties speaking. 25 Interruption by the court reporter.)</p> <p style="text-align: right;">Page 18</p>	<p>1 MS. KAPPELMAN: Okay. 2 BY MR. GOODMAN: 3 Q. Are you telling the jury that Ms. Forsythe 4 is a serial liar who lies about many things? 5 MS. KAPPELMAN: Object to the form of 6 the question. 7 You can answer, Mike. 8 A. No, I'm not stating that. I'm saying that 9 I personally find her to be untrustworthy. 10 Q. In your understanding, has she just been 11 untrustworthy about her characterization of the 12 event on January 22, 2019? 13 A. No, no. This is an opinion formulated over 14 time. 15 Q. Okay. So from your standpoint, she has 16 made many statements either about you or about other 17 things that are -- that you regard as a lie? 18 MS. KAPPELMAN: Object to the form of 19 the question. 20 You can answer. 21 A. Yeah, I would regard them as untrue. 22 Q. You worked with -- you worked with Emily at 23 Amazon prior to you both being at Wayfair; correct? 24 A. Correct. 25 Q. Please describe all the interactions you</p> <p style="text-align: right;">Page 20</p>
<p>1 MR. GOODMAN: I'm reasking the 2 question. 3 MS. KAPPELMAN: Okay. Go ahead. 4 BY MR. GOODMAN: 5 Q. Mr. McDole, is it your testimony that 6 Ms. Forsythe is lying about your conduct on 7 January 22, 2019, in her complaint? 8 A. I will say that I believe she is mistaken 9 in her recount of events. 10 Q. You deny that account; correct? 11 A. Correct. 12 Q. If that's the case, why are you hesitating 13 in -- to not call her a liar? 14 A. I would say that, you know, part of my 15 argument is that she is very untrustworthy. I would 16 not count her a liar. I will give her the benefit 17 of the doubt in saying that she's just mistaken. 18 Q. So when you say she's very untrustworthy, 19 are you telling the jury that she lies? 20 MS. KAPPELMAN: There's no jury here, 21 Bob. 22 MR. GOODMAN: I know. But if this is 23 shown in a trial because he's unavailable, he's 24 beyond the subpoena range, I can ask that question 25 that way.</p> <p style="text-align: right;">Page 19</p>	<p>1 had during your joint employment by Amazon. 2 MS. KAPPELMAN: I'm sorry. I'm going 3 to object. Bob, do you really want him to talk 4 about every interaction he had with her while they 5 were both employed at Amazon for a long period of 6 time? 7 MR. GOODMAN: Well, it doesn't sound 8 like it's going to go very long, unless he has -- 9 unless he's going to call Ms. Forsythe a liar for 10 saying that there were limited instances. So yes, I 11 do want a narrative answer. 12 BY MR. GOODMAN: 13 Q. What were your interactions as an employee 14 of Amazon with Emily as an employee of Amazon? 15 A. So the very first interaction would have 16 been in the fall of 2015. Emily Forsythe did send 17 me an email. We worked in different department -- 18 or different facilities at the time. I did not know 19 who she was. Had sent me an email asking if she 20 could tour our facility. She was going to be 21 traveling and wanted to see if she could tour the 22 facility. That was the very first introduction and 23 interaction. 24 Q. What was your facility? 25 A. I was outside of Cincinnati, Ohio in</p> <p style="text-align: right;">Page 21</p>

<p>1 Hebron, Kentucky.</p> <p>2 Q. All right. And where was she working?</p> <p>3 A. She worked in Louisville, Kentucky.</p> <p>4 Q. All right. Go to the next one, please.</p> <p>5 A. The next one was, I would say, several</p> <p>6 weeks to a month afterwards. I was down in</p> <p>7 Louisville, and we had spent the day -- we'd spent</p> <p>8 the day -- half the day, the morning together, so</p> <p>9 had gone to one of the distilleries on the Whiskey</p> <p>10 Trail. It's Evan Williams. I believe that's in</p> <p>11 downtown Louisville. And then had walked around one</p> <p>12 of the parks in the local area. And that was the</p> <p>13 only interaction with her.</p> <p>14 Shortly after that, she relocated to either</p> <p>15 North or South Carolina, later that year. And then</p> <p>16 I believe in November/December time frame, she had</p> <p>17 actually left Amazon.</p> <p>18 So that was the only -- those two</p> <p>19 interactions were the only interactions with her</p> <p>20 while at Amazon.</p> <p>21 Q. Was there a time that you visited her in</p> <p>22 Cohasset, Massachusetts?</p> <p>23 A. Yes. In December of 2015.</p> <p>24 Q. How did that visit come up?</p> <p>25 A. She had texted me in the winter, either</p> <p style="text-align: right;">Page 22</p>	<p>1 code, which is Dallas, despite living in Kentucky.</p> <p>2 And from there, the conversation led to the fact</p> <p>3 that she was -- had spent time in that area.</p> <p>4 Q. Okay. But you never -- you knew that she</p> <p>5 had lived in Dallas for a period of time but never</p> <p>6 knew that she graduated from the same high school;</p> <p>7 right?</p> <p>8 A. Right.</p> <p>9 Q. What are her parents' names?</p> <p>10 A. I believe they are Carl and -- I forget</p> <p>11 what it is. I want to say something that starts</p> <p>12 with an S or a C. Like, Cheryl or Sherry, Cheryl.</p> <p>13 This is -- I'm trying to remember from six years</p> <p>14 ago. I apologize.</p> <p>15 Q. How many days or hours were you in</p> <p>16 Cohasset?</p> <p>17 A. Two and a half, three days.</p> <p>18 Q. Did you have a romantic interest in Emily</p> <p>19 before you visited Cohasset?</p> <p>20 A. No, I did not.</p> <p>21 Q. Did you have a romantic interest in Emily</p> <p>22 during or after you visited her in Cohasset?</p> <p>23 A. Briefly, for about a month after. I'd say</p> <p>24 for about a month after. I know from prior</p> <p>25 statements that you're aware that we had -- kind of</p> <p style="text-align: right;">Page 24</p>
<p>1 November or December. I forget what it was. But</p> <p>2 telling me that she'd actually left Amazon and how</p> <p>3 it was going, that she was moving back to Boston,</p> <p>4 Massachusetts. And through the course of talking,</p> <p>5 kind of arranged -- she had suggested coming out to</p> <p>6 Boston to visit and spend a few days, so I took her</p> <p>7 up on that offer and went out there and spent a few</p> <p>8 days. It was, I'd say, in -- somewhere in between</p> <p>9 December 15th and December 25th time frame. I</p> <p>10 forget the exact dates. But it was at her</p> <p>11 suggestion.</p> <p>12 Q. She also graduated from Highland Park High</p> <p>13 School; correct?</p> <p>14 A. I don't know where she graduated, honestly.</p> <p>15 I know she lived in the neighborhood for a brief</p> <p>16 period of time, but I don't know where she</p> <p>17 graduated.</p> <p>18 Q. So the two of you never had occasion to</p> <p>19 discuss whether you both graduated from the same</p> <p>20 high school?</p> <p>21 A. We did. We did actually discuss it. Going</p> <p>22 back to our very first introduction, she had -- when</p> <p>23 she had emailed while at Amazon to request a tour of</p> <p>24 our facility, I had noticed -- we exchanged phone</p> <p>25 numbers. I had noticed that she had a 214 area</p> <p style="text-align: right;">Page 23</p>	<p>1 had, like, a -- whatever you want to call it, a</p> <p>2 romantic encounter on the last day of my visit</p> <p>3 there. And from there, you know, briefly</p> <p>4 entertained the idea for about a month, but it was</p> <p>5 clear that that was not going to lead anywhere.</p> <p>6 Q. You expressed interest, and she declined;</p> <p>7 correct?</p> <p>8 A. Yes. Well, I would like to say it was a</p> <p>9 mutual interest.</p> <p>10 Q. Well, but the reason it didn't go anywhere</p> <p>11 is that she ultimately declined to -- she declined</p> <p>12 your romantic interest as expressed that next month;</p> <p>13 correct?</p> <p>14 A. No, I don't believe that's correct. I</p> <p>15 believe the reason it did not go anywhere was</p> <p>16 because she was still living in Boston, and I was in</p> <p>17 Cincinnati, 1,000 miles away, and there was just no</p> <p>18 room for any sort of relationship. It was not</p> <p>19 practical.</p> <p>20 Q. So you're denying that she declined to --</p> <p>21 declined a continuing personal relationship in</p> <p>22 January of 2016?</p> <p>23 A. No, I'm not denying that. I'm simply</p> <p>24 saying that it was kind of a mutual declamation.</p> <p>25 Q. How did you communicate in the last six</p> <p style="text-align: right;">Page 25</p>

<p>1 days of December of '15 and month of January 2016</p> <p>2 about a personal relationship? Was it by phone?</p> <p>3 Was it -- I don't gather it was in person. By text?</p> <p>4 By email? How did you do so?</p> <p>5 A. Predominantly by text.</p> <p>6 Q. Was there any phone call in January 2016</p> <p>7 between her and you?</p> <p>8 A. Not that I recall.</p> <p>9 Q. Do you remember in March of 2019 being</p> <p>10 alone at a meeting with Emily at Wayfair</p> <p>11 headquarters in Boston?</p> <p>12 A. I do.</p> <p>13 Q. She alleges in paragraph 8 of her complaint</p> <p>14 that, again, as in January 2019, without her express</p> <p>15 or implicit invitation of solicitation, you again</p> <p>16 sat close to her to the point that she was</p> <p>17 uncomfortable.</p> <p>18 A. No, that is not true. We were, again,</p> <p>19 sitting on opposite sides of the table.</p> <p>20 Q. And you never sat on the same side of the</p> <p>21 table?</p> <p>22 A. No.</p> <p>23 Q. Or otherwise close to her?</p> <p>24 A. No.</p> <p>25 Q. And you deny that your legs touched hers at</p> <p style="text-align: right;">Page 26</p>	<p>1 the question. I'm sorry. I don't understand what</p> <p>2 you're saying. Maybe somebody does.</p> <p>3 MR. GOODMAN: He said it was horseshoe</p> <p>4 shaped.</p> <p>5 MS. KAPPELMAN: I understand.</p> <p>6 MR. GOODMAN: Quit with the sarcasm.</p> <p>7 MS. KAPPELMAN: No. Honestly, I don't</p> <p>8 think your question is making sense, so if you could</p> <p>9 just try to rephrase that.</p> <p>10 BY MR. GOODMAN:</p> <p>11 Q. Was it horseshoe shaped?</p> <p>12 MS. KAPPELMAN: He said yes.</p> <p>13 A. Yes.</p> <p>14 Q. Which end of the horseshoe, or which side</p> <p>15 of the horseshoe was against the wall?</p> <p>16 A. I believe this is your question, but there</p> <p>17 was the flat side.</p> <p>18 Q. The side -- the side that was perpendicular</p> <p>19 to the other two parts of the table; correct?</p> <p>20 A. I'm sorry?</p> <p>21 Q. It was basically the two parts -- the two</p> <p>22 parts of the table that came out to the third part</p> <p>23 of the table. It was the part -- it was the end of</p> <p>24 the table that was against the wall with the two</p> <p>25 horseshoes coming out from the wall.</p> <p style="text-align: right;">Page 28</p>
<p>1 that time?</p> <p>2 A. Yes.</p> <p>3 Q. Or that she was sitting next to a wall?</p> <p>4 A. No. She was -- a glass wall, yes.</p> <p>5 Q. Well, a glass wall is a wall; right?</p> <p>6 A. Yes. And a room has four walls, so...</p> <p>7 Q. Was she sitting closer to a wall than you,</p> <p>8 sir?</p> <p>9 A. No. I was also sitting next to a wall.</p> <p>10 Q. Is it funny to you to accuse a woman of</p> <p>11 lying?</p> <p>12 A. I am not accusing her of lying. I believe</p> <p>13 she's mistaken in her account of events that -- a</p> <p>14 typical Wayfair meeting room is simply a table in a</p> <p>15 small, compact room. So no matter where you're</p> <p>16 sitting, you're sitting next to a wall. In this</p> <p>17 particular meeting, we were on opposite sides of the</p> <p>18 table.</p> <p>19 Q. Was this table -- was one end or side of</p> <p>20 this table against a wall?</p> <p>21 A. Yes. It's a horseshoe shape.</p> <p>22 Q. The table was horseshoe shaped, and one of</p> <p>23 the short sides of one of -- one of the short ends</p> <p>24 of one of the sides was against the wall?</p> <p>25 MS. KAPPELMAN: Object to the form of</p> <p style="text-align: right;">Page 27</p>	<p>1 A. I would say -- actually, this is a wall.</p> <p>2 Like, this would be the table coming out from the</p> <p>3 wall.</p> <p>4 Q. Okay. So it was the opposite. The common</p> <p>5 side of the table was away from the wall.</p> <p>6 MS. KAPPELMAN: The open end of the</p> <p>7 horseshoe? Can we say it that way? The open end of</p> <p>8 the horseshoe was against the wall?</p> <p>9 BY MR. GOODMAN:</p> <p>10 Q. That's a better way to say it. The open</p> <p>11 end of the horseshoe was against the wall, sir;</p> <p>12 right?</p> <p>13 A. Correct.</p> <p>14 Q. And she was sitting on one side of the</p> <p>15 horseshoe near the wall; correct?</p> <p>16 A. Correct. And I was on the other.</p> <p>17 Q. And you deny moving over to her side and</p> <p>18 having your legs touch hers and allowing no space</p> <p>19 between the two of you so that she was forced closer</p> <p>20 to the wall?</p> <p>21 A. Yes, I do.</p> <p>22 Q. When in your life have you ever touched</p> <p>23 Emily Forsythe?</p> <p>24 MS. KAPPELMAN: I'm sorry. What was</p> <p>25 that question, Bob?</p> <p style="text-align: right;">Page 29</p>

<p>1 BY MR. GOODMAN: 2 Q. When in your life have you ever touched 3 Emily Forsythe? 4 A. In December of 2015 in Cohasset, 5 Massachusetts. 6 Q. And how had you touched her in December 7 2015? 8 A. I would say our very first physical 9 interaction was when she kissed me. Yeah, when she 10 kissed me. 11 Q. Was there any other physical action in 12 December 2015 in Cohasset? 13 A. Yes. So later that evening -- it was the 14 last evening before I was going to return home. I 15 was still staying at her parents' house and she 16 invited me into her bedroom and we made out, for 17 lack of a better term. 18 Q. With clothes on? 19 A. Yes. 20 Q. How long was the encounter? 21 A. An hour, maybe. 22 Q. On March 14, 2019, the day after this 23 second meeting I'd asked you about, did you ask 24 Emily to dinner? 25 A. No. She had asked me.</p> <p style="text-align: right;">Page 30</p>	<p>1 BY MR. GOODMAN: 2 Q. You deny asking Emily to dinner without any 3 pretense of your invitation to dinner being work 4 related on March 14th. Do you deny that, or do you 5 agree with that? 6 A. I deny that in the sense that she had asked 7 me to dinner, and it was loosely work related in 8 terms of it -- you know, we -- still being on the 9 same team at that point in time. 10 Q. Did you discuss anything -- any 11 work-related matter that you would be addressing at 12 dinner? 13 A. No. 14 Q. So it was -- you're saying it was work 15 related because you were both employed by Wayfair 16 and you were both on the same team as of March 14, 17 2019? 18 A. I would say, yes, it was in that regard. I 19 think at that point in time there was still some 20 semblance of a friendship that we were trying to 21 maintain, and the hope being that I would transition 22 to a new team. We would not be interacting after 23 that point in time so that we can maintain a 24 positive working relationship. It was work related 25 in that regard.</p> <p style="text-align: right;">Page 32</p>
<p>1 Q. Did you make reference, in discussing going 2 out to dinner with her, that you would no longer be 3 on her team as of April 1, 2019? 4 A. That is correct. That was the date -- 5 transition date for moving to a new team. 6 Q. In what way did that date come up in 7 discussing whether you would go to dinner? 8 A. I'm not sure I follow your question. So 9 that was publicized -- the transition date was 10 publicized well in advance. 11 Q. When you were discussing whether you would 12 go to dinner on March 14, 2019, I've already asked 13 you did the subject of your transition on April 1 14 come up. I'm asking in what way did it come up? 15 A. As a matter of fact, April 1st is a 16 transition date to a new team. 17 Q. Did either of you discuss that you would go 18 out to dinner with one another only after April 1? 19 A. No, no. I was moving. April 1st marks a 20 date in which I was moving to California. 21 Q. So you're denying that you asked her to 22 dinner without any pretense of the invitation being 23 work related? 24 MS. KAPPELMAN: I'm sorry. Can you 25 just repeat the question?</p> <p style="text-align: right;">Page 31</p>	<p>1 Q. When either of you discussed whether you 2 would go to dinner that night, did the subject of 3 any work topic come up? 4 A. No. 5 Q. Did you tell her that you were interested 6 in going to dinner with her when you were no longer 7 on her team? 8 A. No. 9 Q. Did she tell you that she was ready to go 10 to dinner with you when you were no longer on her 11 team? 12 A. No. 13 Q. Did you have dinner on March 14, 2019? 14 A. No, no. I declined the invitation. 15 Q. Emily told you, didn't she, that she would 16 only work -- only meet you for a work-related 17 meeting; correct? 18 A. No. I believe that's incorrect. Again, 19 she had sent the invitation for the dinner. 20 Q. And in what form, sir? 21 A. In email and in text. 22 Q. Email and text? Is that what you're 23 saying? 24 A. Yes. An actual calendar invite. 25 Q. Did you ever complain about Emily to a</p> <p style="text-align: right;">Page 33</p>

<p>1 third party in writing?</p> <p>2 A. No. Not to third parties. Not in --</p> <p>3 Q. Did you ever complain about Emily to</p> <p>4 anybody besides Emily directly?</p> <p>5 A. I did, to her immediate supervisor at the</p> <p>6 time, Matt Witte. This was after having left her</p> <p>7 team.</p> <p>8 Q. So you're saying you never complained to</p> <p>9 Matt Witte before April 1, 2019?</p> <p>10 A. No.</p> <p>11 Q. How many times did you complain to</p> <p>12 Mr. Witte about her after April 1, 2019?</p> <p>13 A. I would say once or twice.</p> <p>14 Q. This was in writing; correct?</p> <p>15 A. In person. Not in writing.</p> <p>16 Q. Did you ever complain to Mr. Witte about</p> <p>17 her in writing?</p> <p>18 A. No. Not that I recall.</p> <p>19 Q. And you're saying you complained about her</p> <p>20 to Mr. Witte twice verbally?</p> <p>21 A. Yes.</p> <p>22 Q. Ever complain to him by text?</p> <p>23 A. No.</p> <p>24 Q. Or by social media post?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 34</p>	<p>1 her by text, it would only be between you for a few</p> <p>2 days that -- (Indecipherable.)</p> <p>3 (Interruption by the court reporter.)</p> <p>4 BY MR. GOODMAN:</p> <p>5 Q. Are you telling us that there are no texts</p> <p>6 between you and Ms. Forsythe after the first week in</p> <p>7 April that were ever sent or received?</p> <p>8 A. I couldn't give you an official date, but</p> <p>9 yes, I deleted her number in April of 2019 to</p> <p>10 completely break off any sort of personal</p> <p>11 communication with her.</p> <p>12 Q. When did you complain -- did you complain</p> <p>13 to anybody besides Mr. Witte in any manner about</p> <p>14 Emily apart from the complaints you made to her</p> <p>15 directly?</p> <p>16 A. No.</p> <p>17 Q. When did you complain to Mr. Witte about</p> <p>18 Emily?</p> <p>19 A. I think the -- I had mentioned it in April</p> <p>20 of -- mid-April of 2019, and then in person right</p> <p>21 around April 30th or May 1st of 2019, and then two</p> <p>22 times over the course of the summer.</p> <p>23 Q. When were the two times?</p> <p>24 A. In July, I believe, and then in August, in</p> <p>25 very brief phone conversations.</p> <p style="text-align: right;">Page 36</p>
<p>1 Q. Did you complain to Emily about her in</p> <p>2 communications with her in writing?</p> <p>3 A. I'm sorry. I missed part of that.</p> <p>4 Q. Did you make complaints about Emily to her</p> <p>5 directly in writing at any time in 2019?</p> <p>6 A. In text, yes.</p> <p>7 Q. In text?</p> <p>8 A. Yes.</p> <p>9 Q. Not in person or emails?</p> <p>10 A. In person, yes, during various meetings,</p> <p>11 but in -- but not in email.</p> <p>12 Q. Have you retained all the texts from 2019</p> <p>13 for you and Ms. Forsythe?</p> <p>14 A. I have not. I deleted her number quite</p> <p>15 some time ago.</p> <p>16 Q. When did you delete them?</p> <p>17 A. April of 2019, after I left her team.</p> <p>18 Q. Why?</p> <p>19 A. I had no interest in continuing</p> <p>20 communication on a personal level with Ms. Forsythe.</p> <p>21 Q. So your contention is that you had no text</p> <p>22 between you after April 1, 2019?</p> <p>23 A. No. I would say after the first week of</p> <p>24 April, not April 1st.</p> <p>25 Q. So if you were complaining about Emily to</p> <p style="text-align: right;">Page 35</p>	<p>1 Q. In July and August, you had brief</p> <p>2 conversations with Mr. Witte; right?</p> <p>3 A. Correct.</p> <p>4 Q. What does "brief" mean?</p> <p>5 A. Brief means I knew I was currently in -- at</p> <p>6 that point in time, I was in charge of the Perris</p> <p>7 fulfillment center, and I knew that Emily was going</p> <p>8 to be taking a trip to the facility. And my brief</p> <p>9 conversation with Mr. Witte was to say that I did</p> <p>10 not trust her being in the building that I was</p> <p>11 running.</p> <p>12 Q. And you did that twice in July and August?</p> <p>13 A. She was slated to visit on two separate</p> <p>14 occasions.</p> <p>15 Q. Did she visit?</p> <p>16 A. She did.</p> <p>17 Q. Were the conversations in April and May --</p> <p>18 in mid-April and the end of April with Mr. Witte</p> <p>19 about Ms. Forsythe -- how would you characterize</p> <p>20 them?</p> <p>21 MS. KAPPELMAN: Object to the form of</p> <p>22 the question.</p> <p>23 You can answer, Mike.</p> <p>24 A. I would characterize them as me expressing</p> <p>25 my displeasure with her continuing to engage me</p> <p style="text-align: right;">Page 37</p>

<p>1 after having left her team on April 1st and my 2 efforts to cease communication with her. 3 Q. She was still in industrial engineering 4 while you were in operations after April 1st; 5 correct? 6 A. Correct. 7 Q. And the fact is that at Wayfair, industrial 8 operations people need to engage with operations 9 people from time to time; correct? 10 A. Correct. But in this context, it was 11 outside of that scope. 12 MR. GOODMAN: Object to 13 responsiveness. 14 BY MR. GOODMAN: 15 Q. How was it outside the scope? 16 A. It was outside the scope in terms of -- she 17 was continuing to engage me on projects for her team 18 specifically, not those related to operations. 19 Q. Not those what? 20 A. Related to operations. 21 You are correct in saying that industrial 22 engineering does need to communicate with an 23 operations team, but this fell outside of that 24 scope. 25 Q. So you're saying that even though you were</p> <p style="text-align: right;">Page 38</p>	<p>1 long-term capital expense projects over multimonth 2 timelines. A lot of those were still halfway 3 completed by April 1st. 4 Q. Were you exclusive -- were you the only 5 member of her team assigned to those projects? 6 A. I was. I was. And some of those were 7 handed off to other individuals. 8 Q. What other projects were not completed by 9 the time you left the team? 10 A. That is it, just any sort of capital 11 expense installation that was in progress. 12 Q. Did you communicate with Emily -- did you 13 send her emails after April 1st requesting 14 information from her? 15 A. Yes, I did. 16 Q. Were you verbally aggressive in any of 17 those emails? 18 A. No. 19 Q. Did you criticize her in any of those 20 emails? 21 A. No. 22 Q. Did you copy others on those emails 23 requesting information? 24 A. Relevant parties, yes. 25 Q. Well, you can't copy somebody on half of an</p> <p style="text-align: right;">Page 40</p>
<p>1 not on her team after April 1st, she treated you as 2 if you were? 3 A. Yes. She would continue to ask me to 4 participate in her team's projects, meetings, things 5 of that nature. 6 Q. So do I understand your testimony to be 7 that it was as if you hadn't even gotten off the 8 team? 9 A. That's not necessarily true. You know, 10 obviously I had left her team, but she was 11 continually engaging me sporadically. 12 Q. Sporadically? 13 A. Sporadically, yes. 14 Q. As if you were still on her team? 15 A. No. I would say that if I were still on 16 her team, it would be more than sporadic. This was 17 just sporadic engagements. 18 Q. Were there projects you had been assigned 19 before April 1st that you did not complete as of 20 April 1st? 21 A. There were a few, but it would have not -- 22 it would not have been possible to complete before 23 April 1st. These are long-term -- 24 Q. And what were those? 25 A. So the industrial engineering team works on</p> <p style="text-align: right;">Page 39</p>	<p>1 email, can you? 2 MS. KAPPELMAN: Object to the form of 3 the question. 4 You can answer, Mike. 5 A. You're correct. You cannot do that. So 6 yes, I copied relevant parties on emails. 7 Q. And did you criticize her for not providing 8 information in any of those emails? 9 A. No. 10 Q. Did you ever tell Emily that she had failed 11 you? 12 A. No, I did not. 13 Q. Did you ever tell Emily that she was not a 14 good person? 15 A. I did, yes. 16 Q. When did you do that? 17 A. I believe it was in my last text 18 communication with her. 19 Q. Okay. What did you say to her? 20 A. That I did not trust her with my career and 21 that I did not think she was a good person. 22 Q. Have you ever told anybody that before? 23 A. No. 24 Q. Or since? 25 A. No.</p> <p style="text-align: right;">Page 41</p>

<p>1 Q. Did Emily complain to you directly about 2 emails that were being sent to her in either their 3 tone or their substance? 4 A. She had said it, yes. Yes, she had brought 5 it up. 6 Q. When? 7 A. I believe this was in April, if it's the 8 one that you're referring to. 9 Q. How did you respond to her complaint about 10 the tone or substance of the email? 11 A. I suggested that we talk with her boss, my 12 boss, and an HR rep, which she declined. 13 Q. Did you set up an HR meeting? 14 A. I attempted to. But that evening I was 15 contacted by Matt Witte after she had called him. 16 Q. How did you attempt to set up an HR 17 meeting? 18 A. I was in contact with an HR representative 19 at one of the facilities. 20 Q. Who was that? 21 A. It is Jeanie -- I can't remember her name. 22 She's no longer with Wayfair. Gamero, Jeanie 23 Gamero. G-A-M-E-R-O. 24 Q. Gamero? Like, G-A-M-E-R-O? 25 A. G-A-M-E-R-O.</p> <p style="text-align: right;">Page 42</p>	<p>1 following day, but I did not give any sort of 2 details. 3 Q. Did she get back to you? 4 A. No. After Matt Witte had called me that 5 evening, I did not follow up with her. 6 Q. You had originally said you thought you 7 needed to have a member of HR involved. Why didn't 8 you follow up with her? 9 A. It's after the conversation with Matt, who 10 said that he would kind of take care of things in 11 terms of talking with Ms. Forsythe. 12 Q. Did you criticize Emily in the conversation 13 with Mr. Witte? 14 A. I criticized some of the things that she 15 had done that I felt were inappropriate, yes. 16 Q. Did you have another conversation with 17 Mr. Witte after the one in April about Ms. Forsythe? 18 A. Yes. 19 Q. When was that? 20 A. Either last day of April, first day of May, 21 here at the Perris facility. 22 Q. Was the result of that conversation that 23 you were not going to be assigned to projects on 24 which Ms. Forsythe was working after that date? 25 A. I believe it's the opposite.</p> <p style="text-align: right;">Page 44</p>
<p>1 Q. Just to be clear, like Camaro. Like the 2 car, Camaro, except with a G? 3 A. Correct. 4 Q. And did you email this Gamero or text her 5 or phone? 6 A. I spoke to her in person. She works 7 on-site here in the Perris facility. Or did. 8 Q. When did she leave? 9 A. In August or September -- August or 10 September of 2019. 11 Q. And out in Perris, you'll have the 12 last-known address and telephone number; correct? 13 A. I'm sorry? 14 Q. In Perris, somewhere in Perris, you'll have 15 her address -- last-known address and telephone 16 number; correct? 17 MS. KAPPELMAN: We'll worry about 18 that. That's something Counsel can ask us for. 19 BY MR. GOODMAN: 20 Q. Are those records -- does Perris maintain 21 human resources records? 22 A. I'm sure that they could find that 23 information, but the facility itself does not. 24 Q. Okay. So what did you say to Ms. Gamero? 25 A. I had talked about setting up a meeting the</p> <p style="text-align: right;">Page 43</p>	<p>1 Q. You were going to be assigned to projects 2 on which she was going to be? 3 A. No. That she would not be assigned to 4 projects which I was working, that would have been 5 related to me or the operation that I was in charge 6 of. 7 Q. I'm a little bit confused. 8 You were not going to be working the same 9 projects anymore? 10 A. Correct. And so the industrial engineering 11 team works on projects for operations. So it is not 12 me -- it's not the case that I was not working on 13 her projects. She was not working on projects for 14 my operation -- the facilities that I was managing. 15 Q. Okay. Did you lose it in that 16 conversation? 17 A. No. 18 Q. Did you raise your voice in that 19 conversation? 20 MS. KAPPELMAN: Which conversation is 21 that? With Mr. Witte or with -- is that what you're 22 asking? 23 MR. GOODMAN: Yeah. With Mr. Witte on 24 May 1st. 25 MS. KAPPELMAN: Okay.</p> <p style="text-align: right;">Page 45</p>

<p>1 BY MR. GOODMAN: 2 Q. Did you raise your voice in that 3 conversation with Mr. Witte? 4 A. No. 5 Q. You were calm in that conversation with 6 Mr. Witte in discussing Ms. Forsythe? 7 A. I would say I was upset, but I did not 8 raise my voice. 9 Q. Would there -- do you know why -- would 10 there be any reason for Mr. Witte to be concerned 11 about your ability to psychologically keep it 12 together or emotionally keep it together based on 13 that conversation? 14 A. No, there would be no concern from him 15 whatsoever. 16 Q. Are you saying he didn't express that 17 concern, or you were sure that there wouldn't have 18 been any basis for him to be concerned about your 19 emotional stability after that conversation? 20 A. I'm 100 percent certain that he would not 21 be concerned about my ability to maintain, like, 22 stable emotions after that conversation. 23 Q. Did you have an encounter with -- with 24 Ms. Forsythe on July 22nd at Perris where you 25 touched her blouse?</p> <p style="text-align: right;">Page 46</p>	<p>1 A. No, I did not. That was the only 2 conversation we had that day. 3 Q. Did you speak with her at any time around 4 July 22, 2019, about internet dating applications? 5 A. I did not, no. 6 Q. Or about the possibility of you and her 7 dating? 8 A. No. 9 Q. Or did you invite her at any time around 10 July 22, 2019, to go to dinner with you? 11 A. No. 12 Q. Or to spend the afternoon with her? 13 A. No. 14 Q. Were you in a car with her at any time 15 around July 22, 2019? 16 A. No. 17 Q. Did you ever tell anybody at Wayfair or 18 outside Wayfair that you and Ms. Forsythe were 19 dating or had a personal relationship? 20 A. No, no. 21 Q. What's funny? 22 A. The ludicrousness of the statement. 23 Q. Because of your denials of any unconsented 24 touching? 25 A. I'm sorry?</p> <p style="text-align: right;">Page 48</p>
<p>1 A. No. 2 Q. Did you meet with her on July 22, 2019? 3 A. She came in to my office and stood in the 4 doorway on her way outside of the building. It was 5 the only time I spoke to her that day. 6 Q. Okay. So she never even sat down in the 7 office? 8 A. She sat down in the office, yes. Not in -- 9 yes, she sat down. 10 Q. And how close during that encounter on 11 July 22, 2019 -- how far apart were you and 12 Ms. Forsythe? 13 A. 10, 12 feet. 14 Q. And you never got closer to her than 10 or 15 12 feet? 16 A. No. I was sitting behind a desk. 17 Q. Did you laugh at her during that encounter? 18 A. No. 19 Q. What was she wearing? 20 A. I assume a blouse. 21 Q. What kind of blouse? 22 A. I honestly don't know. 23 Q. Solid or pattern? 24 A. I cannot tell you that. 25 Q. Did you speak with her later that day?</p> <p style="text-align: right;">Page 47</p>	<p>1 Q. Are they ludicrous to you based on your 2 denials of unconsented touching? 3 A. No. It's based on the notion that I would 4 be telling people at Wayfair that we were dating. 5 Q. Did you ever talk to your sister about 6 Emily? 7 A. No. 8 MS. KAPPELMAN: Bob, I don't want to 9 interrupt your line of questions here, but when you 10 get to a good moment to take a comfort break, let me 11 know. 12 A. For what it's worth, I have three sisters. 13 Q. I thought you said you had one. 14 A. One that lives in Dallas, two that live in 15 Austin. 16 Q. What are their names? 17 A. Jordan and Kimberly, 16 and 32 months 18 younger. 19 Q. And why didn't you tell me about them 20 before? 21 A. Your question was -- before was about 22 relatives living in Dallas. 23 MR. GOODMAN: We can take a break now. 24 MS. KAPPELMAN: Okay, thanks. Five 25 minutes. All right?</p> <p style="text-align: right;">Page 49</p>

<p>1 MR. GOODMAN: Yes.</p> <p>2 THE VIDEOGRAPHER: The time is now</p> <p>3 12:09. We're going off the record.</p> <p>4 (Recess taken.)</p> <p>5 THE VIDEOGRAPHER: This is the</p> <p>6 beginning of Tape 2. Time is now 12:20. Back on</p> <p>7 record.</p> <p>8 BY MR. GOODMAN:</p> <p>9 Q. Mr. McDole, did you ever make any false</p> <p>10 statements to others at Wayfair in writing or</p> <p>11 verbally about Emily?</p> <p>12 A. No.</p> <p>13 Q. Did Emily complain about any conduct of</p> <p>14 yours -- conduct or statements of yours to employees</p> <p>15 at Wayfair, if you know?</p> <p>16 MS. KAPPELMAN: If you know.</p> <p>17 A. Not that I'm aware of.</p> <p>18 Q. You never became aware of complaints about</p> <p>19 you that she made to other employees of Wayfair?</p> <p>20 A. No.</p> <p>21 Q. Did you ever talk to Kory McKnight about</p> <p>22 Emily?</p> <p>23 A. I did, yes.</p> <p>24 Q. When?</p> <p>25 A. In late July or early August of 2019.</p> <p style="text-align: right;">Page 50</p>	<p>1 Q. Did you criticize her to her face?</p> <p>2 A. No.</p> <p>3 Q. Were you ever pursued by any representative</p> <p>4 of HR about Emily? And I'm excluding the</p> <p>5 conversation you had with Ms. Gamero.</p> <p>6 A. The only conversation was when I was</p> <p>7 approached in September or October of 2019, and they</p> <p>8 were informing me of the sexual harassment</p> <p>9 complaint.</p> <p>10 Q. Okay. And was that -- you say September.</p> <p>11 Was that before or after Emily was separated?</p> <p>12 A. I believe it was before, yeah.</p> <p>13 Q. Do you know how many days before?</p> <p>14 A. I'm not sure what her separation date was.</p> <p>15 Q. I'll represent her last full day of work</p> <p>16 was September 23rd. Was it before that?</p> <p>17 A. Yes.</p> <p>18 Q. Who contacted you?</p> <p>19 A. Trevor Shaffer-Figueroa.</p> <p>20 Q. And how many times did you talk, either in</p> <p>21 person or over the phone, with Trevor?</p> <p>22 A. Twice, both in person, on succeeding days.</p> <p>23 Q. Was he located in Perris at the time?</p> <p>24 A. He works remotely in Palm Springs, but came</p> <p>25 on-site for that interaction.</p> <p style="text-align: right;">Page 52</p>
<p>1 Q. What was the context?</p> <p>2 A. Similar to the brief conversation with Matt</p> <p>3 Witte. Kory had just joined Wayfair, and Emily was</p> <p>4 reporting to him. I knew that she was going to be</p> <p>5 coming on-site, and so I let Kory know that I was</p> <p>6 not comfortable with her coming to the site.</p> <p>7 Q. On any of these visits to Perris, was she</p> <p>8 scheduled to meet with you?</p> <p>9 A. No, she was not.</p> <p>10 Q. Did you ever -- was there ever a time</p> <p>11 when -- strike that.</p> <p>12 Was the facility near Dallas, south of</p> <p>13 Dallas, that you worked at for a period of time at</p> <p>14 Wayfair?</p> <p>15 A. Lancaster.</p> <p>16 Q. Was there ever a time when you and</p> <p>17 Ms. Forsythe were both at the Lancaster facility?</p> <p>18 A. Yes.</p> <p>19 Q. Do you remember meeting with her alone in</p> <p>20 that facility and raising your voice with her?</p> <p>21 A. No. We did meet. I was still reporting to</p> <p>22 her at that time. But I did not raise my voice at</p> <p>23 any point in time.</p> <p>24 Q. Did you make any threats to her?</p> <p>25 A. No.</p> <p style="text-align: right;">Page 51</p>	<p>1 Q. How long did you meet with him on those two</p> <p>2 days?</p> <p>3 A. About an hour on each day.</p> <p>4 Q. What did he ask you about?</p> <p>5 A. He asked me about working history, working</p> <p>6 relationship with Emily throughout the course of</p> <p>7 Wayfair. And he was following up, asking</p> <p>8 specifically about some of her -- some of her claims</p> <p>9 for --</p> <p>10 Q. Asked some of the same questions I did?</p> <p>11 A. Yes, yes. Regarding a meeting in January,</p> <p>12 a meeting in March, and then, you know, meeting with</p> <p>13 Matt Witte and so on.</p> <p>14 Q. Did he ask you about the meeting in July?</p> <p>15 A. No, he didn't. I mean, I'm sure he did.</p> <p>16 Quite honestly, I'd have to look at it, but --</p> <p>17 Yes, actually, he did. Because he did ask</p> <p>18 specifically about meeting in July and then the</p> <p>19 actual physical touching claim.</p> <p>20 Q. Do you know, was -- can you be more</p> <p>21 specific about when he contacted you, please?</p> <p>22 A. It was -- I don't have specific dates. I</p> <p>23 could look at an old calendar, maybe, but it would</p> <p>24 have been late August, early September, to my</p> <p>25 knowledge. Shortly after she filed the complaint,</p> <p style="text-align: right;">Page 53</p>

<p>1 program.</p> <p>2 Q. And what is the usual -- what is the usual</p> <p>3 progression from pathways operations manager to</p> <p>4 senior operations manager?</p> <p>5 A. Roughly three years. It's a three-year --</p> <p>6 it's billed as a three-year leadership development</p> <p>7 program.</p> <p>8 Q. Okay. In other words, it's unusual,</p> <p>9 according to you, for anybody to go from pathway</p> <p>10 operations manager to senior operations manager in</p> <p>11 less than three years?</p> <p>12 A. It's not unusual, but it's -- it's billed</p> <p>13 as a three-year program; correct.</p> <p>14 Q. And a three-year program, according to you,</p> <p>15 implies that you have to be in the same position for</p> <p>16 the entire three years?</p> <p>17 A. You have the same title for three years.</p> <p>18 Q. For how many months were you in the Special</p> <p>19 Operations command or Special Operations unit of the</p> <p>20 Marine Corps?</p> <p>21 A. I'd say about six months.</p> <p>22 Q. What is the average tour of duty within</p> <p>23 Special Operations within the Marine Corps for</p> <p>24 enlisted personnel?</p> <p>25 A. The average tour of duty?</p> <p style="text-align: right;">Page 66</p>	<p>1 lower than average, or not unusual, by any means.</p> <p>2 Q. So you didn't even complete the training?</p> <p>3 You did not even complete the Special Forces</p> <p>4 training because you were in there for such a</p> <p>5 limited period of time?</p> <p>6 A. I did not complete all of it. That's --</p> <p>7 but it's -- that's not how it's structured. It's</p> <p>8 structured as individual training.</p> <p>9 Q. The Special Forces training in the Marines</p> <p>10 is individual training?</p> <p>11 A. So when you complete kind of a trial to</p> <p>12 join the Special Forces team, you are part of that,</p> <p>13 and then there are various training courses that can</p> <p>14 stretch anywhere from one to two years.</p> <p>15 So to answer your question, no, I did not</p> <p>16 go through all of it.</p> <p>17 Q. What was your title within the Special</p> <p>18 Forces?</p> <p>19 A. I was part of the enlisted rank, so I would</p> <p>20 have been a corporal.</p> <p>21 Q. Were you ever referred to as a team leader</p> <p>22 in Special Forces?</p> <p>23 A. Yes.</p> <p>24 Q. And was your position as a team leader in</p> <p>25 Special Forces your last position before being</p> <p style="text-align: right;">Page 68</p>
<p>1 Q. The average time in that position.</p> <p>2 MS. KAPPELMAN: Object to the form of</p> <p>3 the question.</p> <p>4 If you know.</p> <p>5 A. I could not tell you.</p> <p>6 Q. Six months is on the very short end of how</p> <p>7 long people who get into the Marine Special Forces</p> <p>8 stay there, isn't it?</p> <p>9 MS. KAPPELMAN: Object to the form of</p> <p>10 the question.</p> <p>11 You can answer if you know, Mike.</p> <p>12 A. No, it's not, because it's circumstantial.</p> <p>13 In a Special Operations unit, they are</p> <p>14 going to run you through specialized training that</p> <p>15 takes anywhere from one to two years. And if you</p> <p>16 join a unit and you're not going to reenlist for</p> <p>17 another four-year term, it is not worth their time</p> <p>18 to keep you in a Special Operations unit.</p> <p>19 So I joined midway through my four-year</p> <p>20 contract and had already expressed my desire to go</p> <p>21 back to school after my four-year contract. So it</p> <p>22 is not worth the military's time to invest two</p> <p>23 years' of training into somebody that is going to be</p> <p>24 leaving.</p> <p>25 So it is not -- six months is not higher or</p> <p style="text-align: right;">Page 67</p>	<p>1 discharged?</p> <p>2 A. No.</p> <p>3 Q. So you cut short even that Special Forces</p> <p>4 role; correct?</p> <p>5 A. I'm not -- yeah. I'm not going to say it's</p> <p>6 correct, no.</p> <p>7 Q. Your LinkedIn profile says that you were a</p> <p>8 team leader in Special Forces from August 2005 to</p> <p>9 July 2006; is that true?</p> <p>10 A. That's correct.</p> <p>11 Q. And you've already told us that the</p> <p>12 training period for a Special Forces enlisted</p> <p>13 personnel is one to two years; correct?</p> <p>14 A. Correct.</p> <p>15 Q. And then in your LinkedIn profile, you say</p> <p>16 your last position was August 2006 to July 2007 as a</p> <p>17 section leader in infantry; correct?</p> <p>18 A. Correct.</p> <p>19 Q. So why didn't you continue the Special</p> <p>20 Forces role until you could -- why wasn't that</p> <p>21 Special Forces role continued throughout the one- to</p> <p>22 two-year period of training?</p> <p>23 A. I'm not sure I follow.</p> <p>24 It was not continued because I was -- I had</p> <p>25 already expressed, through our chain of command,</p> <p style="text-align: right;">Page 69</p>

<p>1 was a -- the same or similar team that she had just 2 joined. 3 Q. But you were not employed with Wayfair at 4 the time? 5 A. No, I was not. Interviewing. 6 Q. What was your LinkedIn message to her? 7 A. I believe she messaged me when she saw that 8 I was applying for what would have been the same 9 team. 10 Q. What was the substance of the message? 11 A. Nothing, other than maybe tell me about the 12 company. But I'm projecting. I really don't -- 13 have no idea what the substance of the message was. 14 Q. You have no idea what? 15 A. I don't recall what the substance of the 16 message was. 17 Q. So you're contending that she initiated the 18 LinkedIn communication in early 2017? 19 A. As far as I remember, yes. 20 Q. But the one thing you do remember about it 21 is you wanted information about Wayfair? 22 A. Certainly, yes. I was applying to the 23 company. 24 Q. And then you reapplied the following year? 25 A. Yes, I did.</p> <p style="text-align: right;">Page 94</p>	<p>1 not come after April. 2 Q. It came before April? 3 A. Correct. 4 Q. And that was so you could finish certain 5 projects you were working on? 6 A. Correct. 7 MS. KAPPELMAN: Bob, do you need a 8 break or something? 9 MR. GOODMAN: No, I don't. I'm just 10 looking for something. 11 BY MR. GOODMAN: 12 Q. For how long did you commute to California 13 after you took the position on April 1 -- in April 14 of 2019? 15 A. What was the first part? I'm sorry. 16 Q. Did you commute to California for any 17 period of time after April 1, 2019? 18 A. Yes. 19 Q. For how long? 20 A. Three months. 21 Q. So through July 2019; is that fair? 22 A. Correct. 23 Q. What was the meeting that -- the HR meeting 24 that we discussed with the woman in Perris going to 25 be about?</p> <p style="text-align: right;">Page 96</p>
<p>1 Q. When you were interviewing, did you -- did 2 you know you were interviewing for a position on 3 Emily's team? 4 A. Yes, I did. 5 Q. Who did you -- who did you interview with 6 for that position? 7 A. I interviewed with Emily herself, Matt 8 Witte, a gentleman name Greg Konicki, another 9 gentleman named Todd Phillips, I believe, was via 10 phone, and I believe that's it that was on the 11 panel. 12 Q. Did you disclose a prior romantic interest 13 in Emily to any of the interviewers besides Emily? 14 A. No. 15 MS. KAPPELMAN: Object to the form of 16 the question. 17 BY MR. GOODMAN: 18 Q. Do you remember Ms. Forsythe asking you to 19 remain on her team in April 2019 until you've 20 finished certain projects? 21 MS. KAPPELMAN: Object to the form of 22 the question. 23 You can answer. 24 A. No. I know she had mentioned staying on 25 her team until July of 2019, but that request did</p> <p style="text-align: right;">Page 95</p>	<p>1 MS. KAPPELMAN: Jeanie Gamero? 2 MR. GOODMAN: Yes, Ms. Gamero. 3 BY MR. GOODMAN: 4 Q. What was it supposed to be about? 5 A. It was about the fact that after taking 6 several steps to distance myself from Emily, 7 including physically moving across the country, that 8 she would continuously engage me. And I got tired 9 of that, so I wanted to bring HR into the 10 conversation. 11 Q. And this is a meeting you suggested in 12 response to a conversation with her; correct? 13 A. Correct. She had -- 14 Q. In which she complained about your being 15 aggressive and bullying with her; correct? 16 MS. KAPPELMAN: Object to the form of 17 the question. 18 Michael, you can answer. 19 A. She had -- she had stated -- or suggested 20 having a meeting between myself; my supervisor at 21 the time, Matt Witte, which was her supervisor at 22 the time; and herself. 23 And my response was that we should also 24 include HR into the conversation. 25 Q. But what she was complaining about was your</p> <p style="text-align: right;">Page 97</p>


<p>1 being aggressive with her and bullying her; correct?</p> <p>2 A. I do not -- that would be her -- her view.</p> <p>3 I don't think --</p> <p>4 (Multiple parties speaking.)</p> <p>5 MS. KAPPELMAN: Can you please not</p> <p>6 interrupt him, Bob? I'm going to ask you not to</p> <p>7 interrupt him, and let him finish getting his</p> <p>8 answers out, if only just for the court reporter to</p> <p>9 get a good transcript.</p> <p>10 Michael, could you please finish your</p> <p>11 response.</p> <p>12 A. Sure. I would say that would be her</p> <p>13 account. I would say my whole rationale for wanting</p> <p>14 to include HR into the conversation was that I had</p> <p>15 felt the same way, that she was harassing and</p> <p>16 bullying me, and that's why I felt the need to bring</p> <p>17 HR into the conversation despite the --</p> <p>18 MR. GOODMAN: Object to</p> <p>19 responsiveness.</p> <p>20 BY MR. GOODMAN:</p> <p>21 Q. You had not previously complained that she</p> <p>22 was being aggressive with you or bullying you prior</p> <p>23 to her complaining about that with you; correct?</p> <p>24 A. I had not complained, no.</p> <p>25 Q. Was it customary for industrial engineers</p> <p style="text-align: right;">Page 98</p>	<p>1 team.</p> <p>2 Q. And you did not know that -- Harpoon</p> <p>3 Brewery, why didn't you go?</p> <p>4 A. I was working.</p> <p>5 Q. Any other reason?</p> <p>6 A. No.</p> <p>7 Q. Did you ever talk to Jordan about sleeping</p> <p>8 with girlfriends?</p> <p>9 A. With my sister about sleeping with women?</p> <p>10 Q. With other women, right.</p> <p>11 A. No.</p> <p>12 Q. What does the term "STU" stand for at</p> <p>13 Wayfair?</p> <p>14 A. STU?</p> <p>15 Q. Right.</p> <p>16 A. I'm sorry. STU?</p> <p>17 Q. Yes. Do you know what it means?</p> <p>18 A. I believe it's a single-threaded owner, or</p> <p>19 single -- no, that's not it. It's a</p> <p>20 single-threaded -- I'm not sure what it -- is there</p> <p>21 context other than just this?</p> <p>22 Q. Did you ever speak to Mr. -- to Victor</p> <p>23 Davis about Emily?</p> <p>24 A. Yes, I did.</p> <p>25 Q. When?</p> <p style="text-align: right;">Page 100</p>
<p>1 to give notice to a site director that they were</p> <p>2 going to visit them before the industrial engineer</p> <p>3 visited the site?</p> <p>4 A. I think it's customary for anybody that's</p> <p>5 traveling to a site, regardless of team.</p> <p>6 Q. What is Harpoon Brewery?</p> <p>7 A. What?</p> <p>8 Q. Harpoon Brewery.</p> <p>9 A. I think it's a brewery owned by Harpoon.</p> <p>10 Q. By what?</p> <p>11 A. I believe it's a brewery in Boston,</p> <p>12 Massachusetts.</p> <p>13 Q. Have you ever gone there?</p> <p>14 A. I have not, no.</p> <p>15 Q. Did you -- did Ms. Forsythe ever suggest</p> <p>16 you go to Harpoon Brewery with her?</p> <p>17 A. Yes.</p> <p>18 Q. And when was that?</p> <p>19 A. I believe that was in March of 2019.</p> <p>20 Q. What was the context?</p> <p>21 A. That we were both going to be in Boston at</p> <p>22 the time.</p> <p>23 Q. And what were you there for?</p> <p>24 A. I was there for a meeting with -- for a</p> <p>25 project with Matt Witte to present to the executive</p> <p style="text-align: right;">Page 99</p>	<p>1 A. When he first came -- when he first joined</p> <p>2 Wayfair, and I was reporting to him.</p> <p>3 Q. When was that?</p> <p>4 A. It would have been July/August of 2016.</p> <p>5 I'm sorry. 2019.</p> <p>6 Q. What was his role?</p> <p>7 A. He was the regional operations director.</p> <p>8 He was my immediate supervisor.</p> <p>9 Q. Did he have authority over Lathrop as well</p> <p>10 as Perris?</p> <p>11 A. Yes, he did.</p> <p>12 Q. Do you know whether Emily dealt with him</p> <p>13 during 2019 at all on an in-person basis?</p> <p>14 A. I cannot tell you, no.</p> <p>15 Q. Would somebody in his position have dealt</p> <p>16 with IE personnel on a regular basis?</p> <p>17 A. In my position, yes.</p> <p>18 Q. No. Somebody in Mr. Davis's position.</p> <p>19 A. Yes.</p> <p>20 Q. What are unloaders?</p> <p>21 A. They are large mechanical devices with a</p> <p>22 conveyor belt that -- with a conveyor belt, so --</p> <p>23 that kind of help you unload heavier materials off</p> <p>24 trailers.</p> <p>25 Q. Do they push them up to the back of trucks</p> <p style="text-align: right;">Page 101</p>

<p>1 were -- your communications, written and verbal, 2 were not -- not at all tense until April 1, 2019? 3 A. I'm sorry? 4 Q. So do I understand by that that your 5 communications were not -- there was no tension in 6 your communications, no conflict in communications 7 until April 1, 2019? 8 A. I would not say no conflict. I mean, I 9 interviewed for roles outside of her team with the 10 express intent of distancing myself from her. So I 11 would say no, it's not 100 percent no conflict. 12 Q. Were there any communications -- written 13 communications in writing -- and I'll exclude verbal 14 communications. 15 Were there any communications in writing 16 that were -- that were tense or revealed conflict 17 before April 1, 2019? 18 A. If -- not that I explicitly remember, 19 unless you have a specific example. 20 (Interruption by the court reporter.) 21 THE VIDEOGRAPHER: The time is now 22 1:46. We're off the record. 23 (Recess taken.) 24 THE VIDEOGRAPHER: This is the 25 beginning of Tape 3. The time is now 1:55. Back on</p> <p style="text-align: right;">Page 106</p>	<p>1 A. At the time, I still wanted to get back 2 into operations, but a large part of my motivation 3 was to distance myself from Emily. 4 MR. GOODMAN: Object to 5 responsiveness. 6 BY MR. GOODMAN: 7 Q. So you didn't tell him the reason that you 8 told me -- (Indecipherable.) 9 (Interruption by the court reporter.) 10 BY MR. GOODMAN: 11 Q. You didn't tell him anything about -- 12 anything related to Emily when you explained your 13 motivation for seeking a new position; correct? 14 A. No. I find it to be a poor career move to 15 list that as the reason for wanting a transfer. 16 Q. Poor career move to lie? Is that -- 17 A. This was not a lie. I think that's 18 twisting what I'm saying. 19 Q. Poor career move to -- poor career move to 20 say that you wanted to move because you wanted to 21 get away from your supervisor; correct? 22 A. Yes. 23 Q. Did you ever have a conversation with Emily 24 about changing the tone of your communications with 25 her?</p> <p style="text-align: right;">Page 108</p>
<p>1 record. 2 BY MR. GOODMAN: 3 Q. Mr. McDole, I have a few more questions. 4 Did anybody in HR or in management outside 5 HR communicate with you in August or September 2019 6 that -- that wanted to have a conversation with you 7 and Ms. Forsythe and your respective immediate 8 superiors? 9 A. No. Not in August of 2019. 10 Q. When did you interview with Mr. Bugarin for 11 the position at Wayfair? 12 A. It would have been the first week or two of 13 January 2019. 14 Q. And, again, why did you do that? 15 A. I was looking to get off of Emily's team. 16 Q. And is that the reason you gave to 17 Mr. Bugarin? 18 A. No. 19 Q. Okay. So you lied to him, explaining why 20 you wanted to -- 21 MS. KAPPELMAN: Object to the form. 22 You can answer, Mike. 23 A. No, I did not lie to him. 24 Q. You did not lie to him because -- did you 25 give him any reason for wanting to change teams?</p> <p style="text-align: right;">Page 107</p>	<p>1 MS. KAPPELMAN: Asked and answered. 2 You can answer, again. 3 A. No. 4 Q. Did you ever go on a hike with Emily in 5 California? 6 A. We did, yes. 7 Q. And when did you do that? 8 A. It was my very first week with Wayfair. 9 She had asked to go. 10 Q. And what month was that? 11 A. This would have been August of 2018. First 12 or second week of August. 13 Q. And where was it? 14 A. It was here in Perris, California. 15 Q. Did you ever cancel a dinner with Emily? 16 MS. KAPPELMAN: Asked and answered. 17 You can answer again. 18 A. If it's referring to the one in March of 19 2019, then yes, I declined it. 20 Q. Did you decline it on the day that it was 21 scheduled? 22 A. I did, yes. 23 Q. Was there any occasion where you asked to 24 speak to Mr. Witte and Ms. Forsythe alone without 25 the presence of others?</p> <p style="text-align: right;">Page 109</p>

<p>1 A. No. I asked to speak to Matt Witte alone, 2 but not the two of them together. 3 Q. Did you ask -- did you tell Mr. Witte that 4 Emily needed to, quote, get out of the building? 5 A. No. 6 Q. So you were never, at the time we're 7 discussing -- I guess it was in March 2019 -- 8 together with Mr. Witte and Ms. Forsythe in the same 9 room? 10 A. I was in the same room, yes. But my 11 request was to speak to just Matt. 12 Q. Okay. And right before you asked to speak 13 with just Mr. Witte, who was in the room? 14 A. It was myself, Matt Witte, and Emily. 15 And then prior to that it was myself, Matt 16 Witte, Emily, Brittaney Skaggs, Brandon Mallory, 17 Keith Wertman, and Rob -- no, he was not there. I 18 might be missing one other person, but it was about 19 six or seven others. 20 Q. Did you ask them to leave the room? 21 A. I did not ask anybody to leave the room. 22 It was at the conclusion of a meeting between all 23 six or seven of us, and I asked to speak to Matt 24 afterwards. 25 MS. KAPPELMAN: Bob, do you need</p> <p style="text-align: right;">Page 110</p>	<p>1 In the context of projects in which she was 2 involved, yes. 3 Q. Or outside that context? 4 A. No, not outside that context. 5 Q. Who was your predecessor site director? 6 A. A gentleman named Hector Nunez. 7 Q. Do you know why Trevor Shaffer asked you 8 whether you shared your screen or laptop monitor 9 with Emily? 10 A. I'm sorry? 11 Q. Do you know why Trevor Shaffer asked you if 12 you shared your laptop or your screen with 13 Ms. Forsythe? 14 A. I'm sure because he was curious whether or 15 not we had shared a screen or laptop. 16 Q. Do you know why he asked that? 17 A. I have no idea. 18 Q. Did Ms. Forsythe ever ask you to go out for 19 drinks? 20 A. She did, yes. 21 Q. Did she ever ask you to go out for drinks? 22 A. Yes. She asked me, yes. 23 Q. When? 24 A. A couple different times throughout our 25 time, including March in Boston. March of 2019 in</p> <p style="text-align: right;">Page 112</p>
<p>1 another break? 2 MR. GOODMAN: I do not. 3 MS. KAPPELMAN: Okay. You've got five 4 of us sitting here. 5 MR. GOODMAN: I understand. I do not 6 plan discovery depositions like I plan my trial 7 testimony. Sorry. I have to sometimes look at 8 things to decide whether I'm going to ask a 9 question. 10 BY MR. GOODMAN: 11 Q. Have you ever met with Trevor Shaffer 12 before September 2019? 13 A. Yes. He is the HR representative for the 14 Perris building. 15 Q. And does he work in the Perris building? 16 A. No. He works in Palm Springs. 17 Q. You said he worked in Palm Springs; right? 18 A. Correct. 19 Q. Did you ever make a disparaging comment to 20 Mr. Lowe about Ms. Forsythe coming to the Perris 21 facility? 22 A. No. 23 Q. Did you ever make a comment -- did you ever 24 talk to Brittaney Skaggs about Emily? 25 A. I have -- not explicitly about Emily, no.</p> <p style="text-align: right;">Page 111</p>	<p>1 Boston, March of 2019 in Kentucky. That would be 2 two instances. 3 Q. Did that ever happen? 4 A. No. Neither time happened. 5 Q. Excuse me? 6 A. No. Neither time. 7 Q. Okay. Did you ever ask her to go out for 8 drinks? 9 A. No. 10 Q. Has any of your sexual harassment training 11 at any of the companies addressed the effect of a 12 denial of sexual harassment by a male or a female -- 13 the significance of a denial of sexual harassment on 14 the results of a sexual harassment investigation? 15 MS. KAPPELMAN: Object to the form of 16 the question. It makes no sense. Could you please 17 rephrase it. 18 MR. GOODMAN: I'm sorry you don't 19 think things make sense. 20 MS. KAPPELMAN: Mike, do you 21 understand that? 22 A. I interpret it as has any of the trainings 23 covered the meaning of "No means no." Is that the 24 layman's terms of your question? 25 Q. You can answer -- that's not exactly it,</p> <p style="text-align: right;">Page 113</p>

<p>1 but you can --</p> <p>2 A. If that's --</p> <p>3 Q. -- interpretation.</p> <p>4 A. Well, it's -- I mean, it is your question.</p> <p>5 If that's not the actual interpretation, then I also</p> <p>6 don't understand the question because I obviously</p> <p>7 misinterpreted it incorrectly.</p> <p>8 Q. Do you think that a denial of sexual</p> <p>9 harassment by a male of a female ends a sexual</p> <p>10 harassment investigation?</p> <p>11 A. No.</p> <p>12 Q. Why not?</p> <p>13 A. I mean, it's an investigation. Simply a</p> <p>14 denial does not end an investigation.</p> <p>15 Q. Is there a motive on the part of an alleged</p> <p>16 sexual harasser to lie in the workplace, given the</p> <p>17 fact that -- given the implications of a</p> <p>18 verification of a claim of sexual harassment in the</p> <p>19 workplace?</p> <p>20 MS. KAPPELMAN: Bob, I'm going to</p> <p>21 object to the form of that question. I'm going to</p> <p>22 object to the question. It makes no sense. Is this</p> <p>23 really the guy you want to ask that question to, if</p> <p>24 you have a question about motives?</p> <p>25 Please try to rephrase it to make</p> <p style="text-align: right;">Page 114</p>	<p>1 of a problem to be knowingly incomplete, is it?</p> <p>2 A. I'm sorry?</p> <p>3 Q. Somebody that's preparing an analysis of</p> <p>4 the problem should not knowingly delete relevant</p> <p>5 information, should they?</p> <p>6 A. No.</p> <p>7 Knowingly deleting relevant information, is</p> <p>8 it?</p> <p>9 Q. Right. Knowingly not including relevant</p> <p>10 information.</p> <p>11 A. They shouldn't.</p> <p>12 MR. GOODMAN: I'll pass the witness.</p> <p>13 EXAMINATION</p> <p>14 BY MS. KAPPELMAN:</p> <p>15 Q. I just have a couple quick follow-up</p> <p>16 questions based on your testimony today, Mr. McDole.</p> <p>17 I believe you testified earlier today that</p> <p>18 you interviewed for Wayfair first in 2017, and you</p> <p>19 did not get that position. Is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. Okay. And then I believe you testified</p> <p>22 that you interviewed a second time in 2018 for a</p> <p>23 position reporting to Emily Forsythe. Did I get</p> <p>24 that right?</p> <p>25 A. Correct.</p> <p style="text-align: right;">Page 116</p>
<p>1 sense.</p> <p>2 BY MR. GOODMAN:</p> <p>3 Q. Mr. McDole, at Wayfair, given their sexual</p> <p>4 harassment policy, would someone who is accused of</p> <p>5 sexual harassment have a motive to lie in order to</p> <p>6 keep their job, given the no-tolerance policy?</p> <p>7 A. I would say that's not unique to Wayfair.</p> <p>8 Right? Anybody that's guilty of a crime or a</p> <p>9 misdemeanor has a motive to lie to avoid getting</p> <p>10 caught. Is that right?</p> <p>11 Q. Do you have -- is there a -- does Wayfair</p> <p>12 tolerate, in its analysis of a problem, particular</p> <p>13 technical problem, manipulation of data?</p> <p>14 A. No.</p> <p>15 MS. KAPPELMAN: Object to the form of</p> <p>16 the question. What data, Bob? What are we talking</p> <p>17 about?</p> <p>18 MR. GOODMAN: I'm moving on.</p> <p>19 BY MR. GOODMAN:</p> <p>20 Q. Have you been involved in discussions at</p> <p>21 Wayfair where data was incomplete, and it prevented</p> <p>22 you understanding the whole picture of a problem?</p> <p>23 A. I mean, certainly. That's just a part of</p> <p>24 everyday business, though.</p> <p>25 Q. And it's not appropriate for a discussion</p> <p style="text-align: right;">Page 115</p>	<p>1 Q. How did you learn about -- the second time</p> <p>2 about the position available reporting to Emily</p> <p>3 Forsythe?</p> <p>4 A. She had recruited me for that role.</p> <p>5 Q. So she reached out to you?</p> <p>6 A. She was building out her team on the</p> <p>7 industrial engineering team and had recruited me to</p> <p>8 the role.</p> <p>9 Q. How did she communicate with you to let you</p> <p>10 know she had a role she wanted you to apply for?</p> <p>11 A. I began via -- it's either text or</p> <p>12 LinkedIn. I don't -- I'd have to look that up. But</p> <p>13 through one of those mediums.</p> <p>14 Q. Okay. So it wasn't you reaching out to her</p> <p>15 in 2018. She actually sought you out for a position</p> <p>16 reporting to her in 2018?</p> <p>17 A. Correct.</p> <p>18 Q. And -- strike that.</p> <p>19 After she recruited you in 2018 to report</p> <p>20 to her, did you ever discuss the fact that she was</p> <p>21 advocating for a higher salary for you than what was</p> <p>22 originally offered?</p> <p>23 A. Yes. That was part of the bargaining. So</p> <p>24 advocating for, I think, not so much salary, but for</p> <p>25 stock.</p> <p style="text-align: right;">Page 117</p>

<p>1 Q. Okay. And when you say -- you then said 2 after you were hired, you went on a hike with her 3 soon after that in August 2018 in California. Did I 4 get that correct? 5 A. Correct. 6 Q. And who asked who to go for a hike in 7 August 2018? 8 A. So it was actually something that I had 9 done the day prior. And I had said I was going to 10 do it again that evening, and Emily asked to tag 11 along. 12 Q. Okay. And was there anyone else, other 13 than you and Ms. Forsythe, who took that hike in 14 August of 2018 when you worked for her? 15 A. No. 16 Q. At some point you testified that in January 17 you interviewed for a new position. January of 2019 18 you interviewed for a new position to leave 19 Ms. Forsythe's team. Do you recall that testimony? 20 A. Yes. 21 Q. Why did you want to leave Ms. Forsythe's 22 team in January of 2019, specifically? 23 MR. GOODMAN: Objection to form. 24 BY MS. KAPPELMAN: 25 Q. You can answer.</p> <p style="text-align: right;">Page 118</p>	<p>1 Q. And why did you ask Mr. Witte to make sure 2 that the two of you didn't have to interact with 3 each other in April of 2019? 4 MR. GOODMAN: Objection. 5 A. Just -- just from history of finding, you 6 know, basically Emily to be untrustworthy. And then 7 I could not get any assurance that some of the 8 projects in the building would be done under her. 9 So given the prior conflict, I had asked that he 10 take her and transfer her to another -- another 11 facilities project. 12 Q. Did you know that by asking Mr. Witte that, 13 it was possible that you would not have to come in 14 contact with Ms. Forsythe again? 15 A. That was the hope and the intention of the 16 ask. 17 Q. Okay. You understand, in this lawsuit that 18 she's brought against Wayfair, one of her 19 allegations is that you touched her three times 20 without her consent. Do you understand that's one 21 of the allegations? 22 A. Yes. 23 Q. And that she infers that you had a romantic 24 interest in her, and that's why you did that. Do 25 you understand that's her allegation?</p> <p style="text-align: right;">Page 120</p>
<p>1 A. I was really looking to -- to remove myself 2 from her team. I was uncomfortable working on her 3 team any longer. I did -- as I mentioned, I started 4 to lose trust in my career and development under 5 her. 6 Q. When you asked to leave her team in January 7 of 2019, did you have any romantic or sexual 8 interest in Ms. Forsythe? 9 A. No. 10 MR. GOODMAN: Objection to form. 11 BY MS. KAPPELMAN: 12 Q. Okay. And in April of 2019, you actually 13 did transfer away from her team; correct? 14 A. Correct. 15 Q. And you moved across the country to 16 California, so you were also physically away from 17 her; correct? 18 A. Correct. 19 Q. And I believe you testified earlier today 20 that you asked Mr. Witte if he could -- what did you 21 say? Figure out a way so the two of you wouldn't 22 have to engage with each other? 23 A. Yes. I had asked that she be reassigned to 24 projects not pertaining to the buildings that I was 25 working in.</p> <p style="text-align: right;">Page 119</p>	<p>1 A. Yes. 2 MR. GOODMAN: Objection to form. 3 BY MS. KAPPELMAN: 4 Q. And yet you were asking not to have to 5 engage with her as early as January of 2019; 6 correct? 7 A. Correct. 8 MR. GOODMAN: Objection to form. 9 BY MS. KAPPELMAN: 10 Q. As part of Ms. Forsythe's testimony, she's 11 also alleged that you asked her out to dinner and 12 drinks and to engage with her personally, and she 13 was not interested. Are you aware that that's part 14 of her allegations in this case? 15 A. Yes. 16 Q. Okay. She also alleges that you were the 17 one that asked her for dinner and drinks in March of 18 2019, and she declined. 19 You've testified here today that, in fact, 20 it was her who asked you for dinner and drinks, and 21 you declined. Do you remember that testimony? 22 A. Yes, I do. 23 Q. Did Ms. Forsythe -- if I wanted to look 24 this up, how would Ms. Forsythe reach out to you if 25 she wanted to ask you for dinner and drinks?</p> <p style="text-align: right;">Page 121</p>

<p>1 A. Certainly. I think there are -- whether 2 it's chats, local chats, text, or actual calendar 3 invites that would corroborate that. 4 Q. And if she sent you a calendar invite for 5 dinner and drinks in March of 2019, would that come 6 by email? 7 A. Yes. 8 Q. Okay. And it would be an email from her to 9 you? 10 A. Correct. 11 Q. Okay. And if she wanted you to meet her at 12 the Harpoon Brewery, would that come by email? 13 A. Yes. 14 MR. GOODMAN: Objection to form. 15 BY MS. KAPPELMAN: 16 Q. From her to you? 17 MR. GOODMAN: Same objection. 18 A. Yes. 19 Q. And do you, in fact, remember her sending 20 you an email asking you to go out to dinner and 21 drinks with her in March of 2019? 22 A. I do, yes. Multiple different instances. 23 Q. Okay. And do you, in fact, remember her 24 sending you an email asking you to meet her at the 25 Harpoon Brewery in March of 2019?</p> <p style="text-align: right;">Page 122</p>	<p>1 I, Kristen C. Krakofsky, court reporter and 2 notary public in and for the Commonwealth of 3 Massachusetts, certify: 4 That the foregoing proceedings were taken 5 before me at the time and place herein set forth, at 6 which time the witness was properly identified by 7 means of a Kentucky driver's license and put under 8 oath by me; 9 That the testimony of the witness, the 10 questions propounded, and all objections and 11 statements made at the time of the examination were 12 recorded stenographically by me and were thereafter 13 transcribed; 14 That the foregoing is a true and correct 15 transcript of my shorthand notes so taken. 16 I further certify that I am not a relative 17 or employee of any of the parties, nor am I 18 financially interested in the action. 19 I declare under penalty of perjury that the 20 foregoing is true and correct. 21 of August, 2020. 22  23 Kristen Krakofsky, Notary Public 24 My commission expires October 25, 2024. 25</p> <p style="text-align: right;">Page 124</p>
<p>1 A. Yes. 2 MS. KAPPELMAN: I've got nothing 3 further. Thank you. 4 MR. GOODMAN: Nothing further. 5 MS. KAPPELMAN: Thanks, Mike. Have a 6 good rest of your day. 7 THE VIDEOGRAPHER: This concludes the 8 deposition. The time is now 2:22, and we're now 9 going off the record. 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: right;">Page 123</p>	<p>1 Emily Forsythe v. Wayfair 2 Michael McDole Job No. 4184653 3 E R R A T A S H E E T 4 PAGE____ LINE____ CHANGE____ 5 _____ 6 REASON_____ 7 PAGE____ LINE____ CHANGE____ 8 _____ 9 REASON_____ 10 PAGE____ LINE____ CHANGE____ 11 _____ 12 REASON_____ 13 PAGE____ LINE____ CHANGE____ 14 _____ 15 REASON_____ 16 PAGE____ LINE____ CHANGE____ 17 _____ 18 REASON_____ 19 PAGE____ LINE____ CHANGE____ 20 _____ 21 REASON_____ 22 _____ 23 _____ 24 Michael McDole Date 25</p> <p style="text-align: right;">Page 125</p>